

[Docket Nos. 27 and 31]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

MARSHALL ROUNTREE,

Petitioner,

v.

KAREN BALICKI, Administrator
of South Woods State Prison,
et al.,

Defendants.

Civil No. 07-5763 (RMB)

MEMORANDUM AND ORDER

THIS MATTER comes before the Court on two motions by the petitioner Marshall Rountree (the "Petitioner"): a motion for leave to appeal in forma pauperis pursuant to Federal Rule of Appellate Procedure 24(a) and a motion for an extension of time to file an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5). Previously, Petitioner filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254(a), which this Court denied on November 18, 2008. At that time, the Court also denied a certificate of appealability.

A. In Forma Pauperis

This Court has reviewed the application for leave to proceed in forma pauperis and finds that the Petitioner, based upon his affidavit information, is unable to afford the fee to appeal.

Accordingly, his application is granted pursuant to 28 U.S.C. § 1915(a).

B. Extension of Time to Appeal

Section 2107(a) of Title 28 of the United States Code establishes a 30-day time limit for filing a notice of appeal in a civil case. 28 U.S.C. § 2107(a); see also Fed. R. App. P. 4(a)(1) ("the notice of appeal . . . must be filed with the district clerk within 30 days after the judgment or order appealed from is entered"). However, section 2107(c) permits the district court to extend the time for appeal upon a showing of excusable neglect or good cause, upon motion filed not later than 30 days after the expiration of the time for appeal. See 28 U.S.C. § 2107(c). Accordingly, Rule 4(a)(5) permits the district court to extend the time to file a notice of appeal if the following two conditions are met:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this 4(a) expires, that party shows excusable neglect or good cause.

Fed. R. App. P. 4(a)(5)(A). Thus, this Court may grant Petitioner's motion only if he filed his motion for an extension no later than 30 days after the expiration of the time originally prescribed by Rule 4(a), see IUE AFL-CIO Pension Fund v. Barker &

Williamson, Inc., 788 F.2d 118, 122 n.2 (3d Cir. 1986), and he shows either excusable neglect or good cause, In re: Diet Drugs Products Liability Litigation, 401 F.3d 143, 154 (3d Cir. 2005).

As to the time requirement, the Order which Petitioner seeks to appeal was entered on November 18, 2008. Petitioner's motion for an extension of time is dated December 12, 2008 and was docketed by the Clerk on December 15, 2008. Accordingly, Petitioner has clearly satisfied the 30-day time limit.

"The good cause standard applies in situations in which there is no fault -- excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant." Fed. R. App. P.

4(a)(5)(A)(ii) advisory committee's note to 2002 amendments.

Paragraphs six through twelve of Petitioner's certification (contained within Docket No. 28), explain his reasons for seeking an extension of time. In substance, the certification explains that the attorney who represented him in the habeas proceedings before the District Court has withdrawn from the representation, that Petitioner cannot afford to retain new counsel, that Petitioner has limited knowledge of the relevant legal processes and is entitled to law-library access only three days each week.

This Court finds that Petitioner has established good cause for failing to file a timely notice of appeal. The Court will grant the motion to extend the time to file the notice of appeal and direct the Clerk to file the notice of appeal nunc pro tunc.

For the reasons stated herein, it is on this 27th day of January 2009, hereby

ORDERED that the motion for leave to appeal in forma pauperis is **GRANTED** [Docket No. 31]; and it is further

ORDERED that the motion for an extension of time to file an appeal is **GRANTED** [Docket No. 27].

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge